

REMARKS

In response to the Office Action mailed October 12, 2004, Applicant respectfully requests reconsideration. To further the prosecution of this Application, Applicant submits the following remarks. Applicant prays that, after consideration of these remarks, a favorable decision will be provided regarding the claims. The claims as now presented are believed to be in allowable condition.

Claims 1-36 are pending in this Application. Claims 1, 4, 11, 13, 15, 19, 22, 25, 29, 32-34 and 36 are herein amended. Claims 1, 11, 19, and 29 are independent claims.

The Examiner objected to claims 15, 17 and 18 under 37 CFR§1.75(b) as not being substantially different from previous claims. Claim 15 has been amended to correct a typographical error, and now properly depends from claim 11. Claims 17 and 18 depend from claim 15. Accordingly, the objection to claims 15, 17 and 18 is believed to have been overcome.

Rejections under §102 and §103

Claims 1-3, 5, 8, 19-21, 23 and 26 were rejected under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 6,477,483 to Scarlat et al. (hereinafter Scarlat). Scarlat discloses, at column 2, lines 32-42, a service provider for remotely load-testing websites over the Internet using a hosted service. The service provider tests the website using a server farm.

Claim 1 has been amended to include the limitation from claim 4 that the predetermined criteria includes a location of the system. The Examiner stated on page 6, paragraph 2, that Scarlat "fails to disclose the method wherein the predetermined criteria are selected from the group comprising: locations of said systems ...". Therefore Scarlat does not disclose or suggest the predetermined criteria including a location of a system. The Examiner stated that Mercury White Paper titled "Load Testing to Predict Web Performance" (hereinafter Mercury),

discloses the use of a location of a system as predetermined criteria to provide load testing of a web site. A careful review of Mercury fails to disclose or suggest the use of a physical location of a system as a criteria for determining whether to use the system to provide load test to a web site. Mercury disclose on page 12 that it can perform "IP spoofing" wherein virtual users from the same system are given different IP addresses to provide an appearance that the packets are coming from different systems, however the packets are actually coming from the same physical machine. Since the packets are coming from the same physical machine, they will traverse the same sub-nets, switches and/or routers as the other packets from the same machine.

In contrast to Scarlet and Mercury, amended claim 1 includes the limitation that the predetermined criteria for selecting a machine to provide load to a web site includes the location of the system. This is recited in the specification as filed at page 3, lines 20-23 which states:

"...the loads may be coming from a different physical location through a different path of routers and switches to exercise the target web site."

And further at page 3, line 32 through page 4, line 4 which states:

"[I]n such a manner the target web site is being load tested by traffic being generated from different parts of the country...these loads are taking different paths to access the target web site, thus providing a more realistic testing environment which more closely resembles the type of traffic the target web site will experience in actual use".

Accordingly, since neither Scarlet nor Mercury disclose or suggest the use of a system's physical location as a criteria for determining whether to use the system to provide load to a web site, claim 1 is believed allowable over Scarlet and Mercury. Claim 19 has been amended in a similar manner as claim 1, and for the same reasons, is also believed allowable over Scarlet and Mercury. Claims 2, 3, 5, 8, 20-21 23 and 26 depend from claims 1 or 19 and are believed allowable as they depend from a base claim which is believed allowable.

-10-

Therefore, the rejection of claims 1-3, 5, 8, 19-21, 23 and 26 under 35 U.S.C. §102(a) is believed to have been overcome.

Claims 11, 12, 14, 16, 29-31 and 35 were rejected under 35 U.S.C. §102(a) as being anticipated by Mercury. As discussed above, Mercury fails to disclose or suggest the use of a physical location of a system as a criteria for determining whether to use the system to provide load test to a web site. Mercury disclose on page 12 that it can perform "IP spoofing" wherein virtual users from the same system are given different IP addresses to provide an appearance that the packets are coming from different systems, however the packets are coming from the same physical machine. Since the packets are coming from the same physical machine, they will traverse the same sub-nets, switches and/or routers as the other packets from the same machine.

In contrast to Mercury, amended claim 11 includes the limitation that the predetermined criteria for selecting a machine to monitor a web site includes the location of the system. As discussed above, Mercury does not disclose or suggest the use of a system's physical location as a criteria for determining whether to use the system (in this instance to monitor a target). Therefore, claim 11 is believed allowable over Mercury. Claim 29 has been amended in a similar manner as claim 11, and for the same reasons, is also believed allowable over Mercury. Claims 12, 13, 14, 16, 30-31 and 35 depend from claims 11 or 29 and are believed allowable as they depend from a base claim which is believed allowable. Therefore, the rejection of claims 11, 12, 14, 16, 29-31 and 35 under 35 U.S.C. §102(a) as being anticipated by Mercury is believed to have been overcome.

The Examiner rejected claims 4, 7, 22, 25 and 36 under 35 U.S.C. §103(a) as being unpatentable over Scarlat in view of Mercury. The Examiner rejected claims 6, 9, 10, 17-18, 15, 24, 27-28 and 33 under 35 U.S.C. §103(a) as being unpatentable over Scarlat in view of U.S. Patent No. 5,721,906 to Siefert (hereinafter Seifert). The Examiner rejected claims 32 and 34 under 35 U.S.C. §103(a) as being unpatentable over Scarlat and Siefert and further in view

-11-

of Mercury. The Examiner rejected claim 13 under 35 U.S.C. §103(a) as being unpatentable over Mercury in view of Siefert. Claims 4, 6-7, 9, 10, 13, 15, 17-18, 22, 24, 25, 27-28, 32-34 and 36 all depend from claim 1, 11, 19 or 29 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejections of claims 4, 6-7, 9, 10, 13, 15, 17-18, 22, 24, 25, 27-28, 32-34 and 36 under 35 U.S.C. §103 is believed to have been overcome.

Conclusion

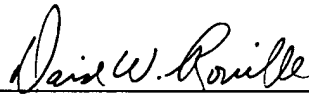
In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' Representative at the number below.

Applicant hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

-12-

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



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